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15 Attorneys for Plaintiff

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ARIZONA

11 United States of America,
12
13 Plaintiff,
14
15 vs.
16 Lonnie Ray Swartz,
Defendant.

CR 15-01723-TUC-RCC(DTF)
GOVERNMENT'S SUPPLEMENT TO THE
RECORD REGARDING GOVERNMENT'S
RESPONSE TO MOTION FOR SANCTIONS
(BRADY VIOLATION) AND MOTION TO
RECUSE
(CORRECTED)

17 COMES NOW the United States of America, by and through its undersigned
18 counsel, and hereby respectfully supplements the record regarding the Government's
19 Response to Motion for Sanctions (*Brady* Violation) and Motion to Recuse [Doc. 251], as
20 follows.

21 1. The Defendant filed a Motion for Sanctions (*Brady* Violation) and Motion to
22 Recuse the United States Attorney's Office for the District of Arizona (Motion) on
23 September 11, 2017. [Doc. 239.] The main premise of Defendant's Motion was that the
24 government committed a Brady violation by not disclosing, until August 16, 2017, notes
25 from AUSA Karen Rolley taken during a meeting in Nogales, Arizona on August 19, 2014,
26 with the Mexican Pathologists, who performed the autopsy of J.A.E.R. Defendant claimed
27 that it was only in the disclosure of those notes that he learned for the first time that the
28 pathologists opined that the fatal head wound was the first wound sustained by J.A.E.R.

1 2. The government filed its Response to that Motion for Sanctions (*Brady*
2 Violation) and Motion to Recuse (Response) on September 22, 2017. [Doc. 251.]

3 3. The Court issued an Order on January 23, 2018, denying defendant's Motion
4 but indicated that it was troubled by the delay in the disclosure of the pathologists'
5 opinions. [Doc. 276.]

6 4. When the government filed its Response, we inadvertently overlooked the
7 fact that disclosure of that opinion had been made much earlier to the defense then claimed
8 in their Motion.

9 5. By disclosure dated December 29, 2015, less than five months after the
10 Indictment, the Government provided defense counsel with a document identified as Bates
11 Numbered 6323. (*See*, Exhibit A, 12/29/15 letter from AUSA Wallace H. Kleindienst to
12 Sean Christopher Chapman, Esq.)

13 6. Document Bates Numbered 6323 is a three page FBI Electronic
14 Communication Memo dated September 17, 2014, entitled "Case Status Meeting with
15 DHS-OIG on 09/11/2014." That Memo is a summary of a conversation between FBI
16 Agents Elizabeth Carroll, Tyler Evenson, and DHS-OIG Agent Sarah Arrasmith, wherein
17 Agent Arrasmith recounts the August 19, 2014, meeting with the Mexican officials in
18 Nogales, Sonora. Page three (3) of the FBI Memo contains the following statement by
19 Agent Arrasmith: "*Based on their investigation to date, Mexican officials believe that the*
20 *first round fired by SWARTZ killed RODRIGUEZ.*" (Bates No. 6325.) A redacted copy of
21 the Memo containing this excerpt is attached hereto as Exhibit B. This disclosure came
22 more than a year and half before the disclosure of AUSA Rolley's notes.

23 Respectfully submitted on this 8th day of February, 2018.

24 ELIZABETH A. STRANGE
25 First Assistant United States Attorney
26 District of Arizona

27 *s/ Wallace H. Kleindienst*

28 Wallace H. Kleindienst
 Assistant U.S. Attorney

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Copy of the foregoing served electronically or by
other means on this 8th day of February, 2018, to:

Sean C. Chapman, Esq.
Jim Calle, Esq.

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U.S. v. Lonnie R. Swartz

Government's Supplement To Government's Response To Motion For Sanctions
(Brady Violation) And Motion To Recuse

EXHIBIT "A"



U.S. Department of Justice

*United States Attorney
District of Arizona*

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*Evo A. DeConcini Federal Courthouse
405 West Congress Street, Suite 4800 (520) 620-7300
Tucson, Arizona 85701*

December 29, 2015

Sean Christopher Chapman, Esq.
LAW OFFICE OF SEAN C CHAPMAN PC
100 North Stone Ave., Ste. 701
Tucson, AZ 85701

Re: *U.S. v. Lonnie Swartz*
CR 15-01723-TUC-RCC (DTF)
First Supplemental Disclosure

Dear Sean:

Enclosed is the Government's First Supplemental Disclosure under its continuing duty of disclosure pursuant to Fed. R. Crim. P. 16(c) regarding the referenced matter. As with the initial disclosure, the enclosed supplemental materials are subject to the protective order entered by the Court (Docs. 11-12). The First Supplemental Disclosure materials are contained in seven (7) disks, and identified as follows:

Four (4) disks of documents identified by the following Bates Numbers:

- Bates Nos. 5038-5543
- Bates Nos. 5544-6095
- Bates Nos. 6096-6660
- Bates Nos. 6661-6670

Additional three (3) disks identified as follows:

- Dispatch Recording 10/10/12 (Marco Gonzalez)
- Documents/Photographs Provided by PGR on November 13, 2014
- 07/17/13 Nogales Sonora Photographs

Please feel free to contact me should you have any questions.

Very truly yours,

Wallace H. Kleindienst
Assistant U.S. Attorney

/rap
Enclosures

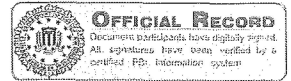
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U.S. v. Lonnie R. Swartz

Government's Supplement To Government's Response To Motion For Sanctions
(Brady Violation) And Motion To Recuse

EXHIBIT "B"

UNCLASSIFIED

**FEDERAL BUREAU OF INVESTIGATION****Electronic Communication**

Title: (U) Case Status Meeting with DHS-OIG on
09/11/2014

Date: 09/17/2014

From: PHOENIX
[REDACTED]

Contact: Elizabeth Goodman Carroll, [REDACTED]

Approved By: SSA BROWN JAMES D III

Drafted By: Elizabeth Goodman Carroll
EVENSON TYLER KRISTIAN

Case ID #: [REDACTED] (U) LONNIE SWARTZ, UNITED STATES BORDER
PATROL AGENT-SUBJECT;
JOSE ANTONIO ELENA RODRIGUEZ-VICTIM,
NOGALES, SONORA MEXICO;
COLOR OF LAW-FORCE AND/OR VIOLENCE;
SENSITIVE INVESTIGATIVE MATTER
SENSITIVE INVESTIGATIVE MATTER

Synopsis: (U) To submit to the case file a summary of case status
meeting with DHS-OIG on 09/11/2014.

Full Investigation Initiated: 10/17/2012

Enclosure(s): Enclosed are the following items:

1. (U) Notes

Details:

On 09/11/2014, Special Agent (SA) Elizabeth Carroll and SA Tyler Evenson met with Department of Homeland Security (DHS) Office of Inspector General (OIG) Supervisory Special Agent (SSA) Sarah Arrasmith at the FBI Tucson Resident Agency (RA), [REDACTED] Tucson, AZ 85745. SSA Arrasmith provided the following information regarding the status of captioned investigation:

In August of 2014, SSA Arrasmith traveled to Mexico with Assistant United States Attorney (AUSA) Karen Rolley and AUSA Wallace Kleindienst

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Title: (U) Case Status Meeting with DHS-OIG on 09/11/2014

Re: [REDACTED] 09/17/2014

in order to visit the location where JOSE ANTONIO ELENA RODRIGUEZ was shot, and to meet with various Mexican officials regarding the status of the investigation. Various investigative techniques were performed at the site of RODRIGUEZ' death, to include a 3-D scan of the location, measurements, and swabs to detect lead. The aforementioned investigative techniques will be used by the United States Attorney's Office (USAO) in an attempt to reconstruct the scene on the night RODRIGUEZ died.



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Title: (U) Case Status Meeting with DHS-OIG on 09/11/2014

Re: [REDACTED] 09/17/2014

[REDACTED] Based on their investigation to date, Mexican officials believe that the first round fired by SWARTZ killed RODRIGUEZ. [REDACTED]

[REDACTED]

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